

1 ROBERT W. FERGUSON
2 *Attorney General*

3 JEFFREY T. SPRUNG, WSBA #23607
4 R. JULY SIMPSON, WSBA #45869
5 SPENCER W. COATES, WSBA #49683
6 PAUL M. CRISALLI, WSBA #40681
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF WASHINGTON**
9 **AT SPOKANE**

10 STATE OF WASHINGTON,

11 NO. 2:20-cv-00182-TOR

12 Plaintiff,

13 **STIPULATED DISMISSAL**
14 **WITHOUT PREJUDICE OF**
15 **FIRST AMENDED**
16 **COMPLAINT**

17 MIGUEL CARDONA, in his official
18 capacity as Acting Secretary of the
United States Department of
Education, and the UNITED STATES
19 DEPARTMENT OF EDUCATION, a
federal agency,

20 Defendants.

21 Plaintiff State of Washington filed a complaint and motion for preliminary
22 injunction in this action on May 19, 2020, (ECF Nos. 1 and 5) challenging
Defendants' imposition of eligibility restrictions on COVID-19 emergency
assistance grants for students under the Higher Education Emergency Relief
Funds Program (HEERF) enacted under the Coronavirus Aid, Relief and
Economic Security (CARES) Act of March 27, 2020. Defendants' eligibility

STIPULATED DISMISSAL
WITHOUT PREJUDICE OF FIRST
AMENDED COMPLAINT
NO. 2:20-cv-00182-TOR

1 restrictions first appeared on April 21, 2020, in guidance that prohibited
2 institutions of higher education from disbursing HEERF grants to students unless
3 they were eligible for federal financial aid under title IV of the Higher Education
4 Act of 1965 (Title IV). On June 17, 2020, Defendants published an Interim Final
5 Rule (IFR) that incorporated Defendants' Title IV restrictions on student
6 eligibility for HEERF grants and also stated that restrictions on the disbursement
7 of "federal financial aid" to certain noncitizens under 8 U.S.C. § 1611
8 (Section 1611) applied to HEERF grants.

9 On June 12, 2020, this Court issued a preliminary injunction (ECF No. 31)
10 prohibiting Defendants from implementing or enforcing the provisions of the
11 April 21, 2020, guidance and the IFR that restricts the discretion of higher
12 institutions in the State of Washington to determine which students will receive
13 CARES Act student emergency financial assistance grants. The Order did not lift
14 the restrictions of Section 1611, and in an Order on a subsequent motion for
15 partial summary judgment, the Court declined to lift those restrictions (ECF
16 No. 63). On September 18, 2020, Plaintiffs filed a First Amended Complaint
17 (ECF No. 69) to incorporate a challenge to Defendants' IFR as *ultra vires* and as
18 violating separation of powers' principles, the Spending Clause, and the
19 Administrative Procedure Act.

20
21
22

STIPULATED DISMISSAL
WITHOUT PREJUDICE OF FIRST
AMENDED COMPLAINT
NO. 2:20-cv-00182-TOR

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

On May 14, 2021, Defendants published in the Federal Register a Final Rule, 86 Fed. Reg. 26608, in which they rescinded the IFR's Title IV and Section 1611 eligibility restrictions on HEERF grants to students and amended applicable regulations to provide that eligible institutions of higher education could disburse HEERF grants to any enrolled student.

THEREFORE, the PARTIES, through their undersigned attorneys,
HEREBY STIPULATE AND AGREE as follows:

1. The above-captioned action is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii); and
 2. All parties will bear their own fees and costs.

RESPECTFULLY SUBMITTED this 21 day of June 2021.

ROBERT W. FERGUSON
Attorney General of Washington

/s/ R. July Simpson

JEFFREY T. SPRUNG, WSBA #23607
R. JULY SIMPSON, WSBA #45869
SPENCER W. COATES, WSBA #49683
PAUL M. CRISALLI, WSBA #40681
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744
jeff.sprung@atg.wa.gov
july.simpson@atg.wa.gov
spencer.coates@atg.wa.gov
paul.crisalli@atg.wa.gov

Attorneys for Plaintiff State of Washington

STIPULATED DISMISSAL
WITHOUT PREJUDICE OF FIRST
AMENDED COMPLAINT
NO. 2:20-cv-00182-TOR

BRIAN M. BOYNTON
Acting Assistant Attorney General
MARCIA BERMAN
Assistant Director, Federal Programs Branch

/s/ *Alexander V. Sverdlov*
ALEXANDER V. SVERDLOV
(New York Bar No. 4918793)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Tel. (202) 305-8550
alexander.v.sverdlov@usdoj.gov

Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

**STIPULATED DISMISSAL
WITHOUT PREJUDICE OF FIRST
AMENDED COMPLAINT
NO. 2:20-cv-00182-TOR**

1 **DECLARATION OF SERVICE**

2 I hereby declare that on this day I caused the foregoing document to be
3 electronically filed with the Clerk of the Court using the Court's
4 CM/ECF System, which will serve a copy of this document upon all counsel of
5 record.

6 DATED this 21 day of June 2021 at Tacoma, Washington.

7 _____
8 */s/ R. July Simpson*
9 R. JULY SIMPSON, WSBA #45869
Assistant Attorney General

10
11
12
13
14
15
16
17
18
19
20
21
22

STIPULATED DISMISSAL
WITHOUT PREJUDICE OF FIRST
AMENDED COMPLAINT
NO. 2:20-cv-00182-TOR

5

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744